

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

PHENOMENON LICENSING,

Plaintiff,

vs.

MYSPEACE, INC.,

Defendant.

) Case No. 1:08 CV 691

)

) Judge Dan Aaron Polster

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) MEMORANDUM OF OPINION

) AND ORDER

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Before the Court is a document which was entered on the docket as a Motion to Remand and a Motion Not to Consolidate (ECF No. 6), along with a Memorandum in Support of those motions. The Court has reviewed the Motions and the Opposition brief (ECF No. 8). For the following reasons, the Motion to Remand is **DENIED**, and the Motion Not to Consolidate is **DENIED AS MOOT**.

I.

On March 20, 2008, Plaintiff Phenomenon Licensing filed a complaint in this district court alleging a combination of federal claims (i.e., Lanham Act and Sherman Act violations) and state claims (Ohio's Antitrust Law violations). (ECF No. 1.) The district court had exclusive subject matter jurisdiction over the federal claims, federal question subject matter jurisdiction over the federal claims and supplemental jurisdiction over the state law claims, and diversity jurisdiction over all the claims. The case was promptly assigned to me by random lot.

On March 28, 2008, Plaintiff filed the identical complaint in the Court of Common Pleas, Cuyahoga County, Ohio under Case No. CV 08 655118. (Case No. 1:08 CV

978; ECF No. 1, Ex. A.) Defendant MySpace Inc. timely removed the case to the district court based on federal question and supplemental jurisdiction, exclusive jurisdiction over the trademark claims, and diversity jurisdiction. (Id., ECF No. 1 ¶¶ 9, 10.) The case was assigned by random lot to District Judge Donald C. Nugent and given Case No. 1:08 CV 978. In the Civil Cover Sheet, Defendant noted that the removed state court case was related to my district court case. (Id., ECF No. 1, Ex. B.) After reviewing the record, Judge Nugent terminated his case and directed that the case proceed under my earlier-filed case. (Id., ECF No. 6.)

Plaintiff has now filed the pending Motion to Remand and Motion Not to Consolidate. (ECF No. 6.) Notwithstanding Plaintiff's argument that he filed federal claims in this case and state claims in the state court case, the records show that he filed identical complaints containing both state and federal claims in both the state and federal courts. Defendant properly removed the state court complaint to federal court and properly advised the court that the state court case was related to my earlier-filed case, and Judge Nugent properly terminated that case as duplicative of my case. I cannot remand my case because it was filed here. Even if my case had originally been filed in state court and removed here, I would not be able to remand it because the Court has original subject matter jurisdiction over the complaint. Accordingly, the Motion to Remand (ECF No. 6) is **DENIED**. Furthermore, as there is no other case with which this case can be consolidated, the Motion Not to Consolidate is **DENIED AS MOOT**.

IT IS SO ORDERED.



Dan Aaron Polster
United States District Judge